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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 09/934,924
Filing Date: August 22, 2001
Appellant(s): BEAMS ET AL.

Kenneth F. Smolik
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 5/18/2009 appealing from the Office action mailed 11/26/2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,310,349	Daniels et al	May 10, 1994
6,029,195	Cook et al	July 30, 2002

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

1. Claims 20-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Daniels et al., U.S. Patent No. 5,310,349[hereinafter Daniels] in view of Cook et al., U.S. Patent No. 6,427,063[hereinafter Cook].

As per claim 20, Daniels discloses a method for providing one or more virtual instructors (virtual teacher or guidance tutor), comprising the steps:

connecting a server and one or more users and first virtual instructor (first teacher) (see col. 3, lines 15-40 and col. 4, lines 19-50 and col. 6, lines 37-64);

selecting a destination (location, class room) within the server to interact with one or more users (see fig. 4, and col. 3, lines 15-40 and col. 4, lines 19-50);

coupling the one or more users through the server based on the selected destination see fig. 4, and col. 3, lines 15-40 and col. 4, lines 19-50); and

establishing interaction parameters (providing support functions) for the one or users based on the selected destination (see fig. 4, and col. 3, lines 15-40 and col. 4, lines 19-50).

Daniels is silent regarding: dynamically adding second virtual instructor with the first virtual instructor and the one or more users.

Cook discloses an agent based instruction system including dynamically adding second virtual instructor (software agent 101)(see col. 10, lines 25-67 and col. 62-55).

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to incorporate the teaching of Cook such as dynamically adding second virtual instructor/tutor with the first virtual instructor and the one or more users into the system of Daniels in order to provide individualized guidance to the students.

In considering claim 21, Cook discloses the method for providing one or more virtual instructors as recited in claim 20, wherein the second virtual instructor monitors progress and provides feedback (see col. 11, lines 49-65)

In considering claim 22, Cook discloses the method for providing one or more virtual instructors as recited in claim 20, wherein the second virtual instructor is selected by one more users (see col. 11, lines 49-65) .

In considering claim 23, Cook discloses the method for providing one or more virtual instructors as recited in claim 20, wherein the second virtual instructor becomes the principal (see col. 11, lines 49-65, where the agent software acts, first, to manage or control the student's instruction, and second, to directly guide the student in order that

the total ABI system can present education to each student in an optimal fashion best adapted to the student's evolving abilities, skills, and preferences)

In considering claim 24, Cook discloses the method for providing one or more virtual instructors as recited in claim 20, wherein the second virtual instructor works with the first instructor to instructor the one or more users (see col. 11, lines 49-65) .

In considering claim 25, Cook discloses the method for providing one or more virtual instructors as recited in claim 20, wherein the second virtual instructor collaborates privately with the first instructor (see Cook as illustrated in figure 1 principle component and interactions in the ABS system including software agent 101 (the second virtual tutor) , materials engine 102, and student data object 109, all of which interact with student 101 and with teachers and administrators 106 via a computer).

In considering claim 26, Cook discloses the method for providing one or more virtual instructors as recited in claim 20, wherein the second virtual instructor leads a breakout session with one or more users (see col. 11, lines 49-65) .

In considering claim 27, Cook discloses the method for providing one or more virtual instructors as recited in claim 20, the second virtual instructor is selected by the first virtual instructor (see col. 11, lines 49-65) .

In considering claim 28, Cook discloses the method for providing one or more virtual instructors as recited in claim 20, the second virtual instructor the interaction parameters include support of for electronic distribution of materials from the second virtual instructor (see col. 11, lines 49-65) .

As per claim 29, Daniels discloses an apparatus comprising:

Memory;

Processor coupled to the memory and configured to perform, based on instructions stored in memory:

Connecting a server and one or more users and first virtual instructor (first teacher) (see col. 3, lines 15-40 and col. 4, lines 19-50 and col. 6, lines 37-64);

selecting a destination (location, class room) within the server to interact with one or more users (see fig. 4, and col. 3, lines 15-40 and col. 4, lines 19-50);

coupling the one or more users through the server based on the selected destination see fig. 4, and col. 3, lines 15-40 and col. 4, lines 19-50); and

establishing interaction parameters (providing support functions) for the one or users based on the selected destination (see fig. 4, and col. 3, lines 15-40 and col. 4, lines 19-50).

Daniels is silent regarding: dynamically adding second virtual instructor with the first virtual instructor and the one or more users.

Cook discloses an agent based instruction system including dynamically adding second virtual instructor (virtual tutor)(see col. 10, lines 25-67 and col. 62-55). Therefore, it

would have been obvious to one having ordinary skill in the art at the time of the invention to incorporate the teaching of Cook such as dynamically adding second virtual instructor/tutor with the first virtual instructor and the one or more users into the system of Daniels in order to provide individualized guidance to the students.

As per claims 30-38, the claims include features similar with features in claims 20-29 discussed above, thus claims 30-38 are rejected same rational as claims 20-29

(10) Response to Argument

As to independent claims 20, 29 and 30:

Applicant alleges “Regarding independent claim 20, the combination of Daniels and Cook fails to even suggest the feature of "dynamically adding a second virtual instructor with the first virtual instructor and the one or more users. Similarly, the combination fails to suggest the feature of "dynamically adding a second virtual instructor with the first virtual instructor and the one or more users" in independent claim 29 and the feature of "dynamically adding a second virtual instructor with the first virtual instructor and the one or more users" in independent claim 30.

In response to the applicant's arguments with respect claims 20, 29 and 30, it seems the applicant is arguing against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.,* 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In this case Daniels initially creates first virtual tutor (i.e., virtual teacher or guidance tutor) in Information management system(IMS) as the examiner maintained all along. However,

examiner finds Daniels fails to disclose creating second virtual tutor. Here Cook provides agent based instruction system including agent software 10 (virtual tutor) for each student (101) which adapts to its student, and provides individualized guidance to the student and controls to the augmented computer assisted instructional materials. Thus, it would have been advantageous to incorporate agent software 10 (virtual tutor) of Cook into the system of Daniels as second virtual tutor in order to provide individualized guidance to the students of the system of Daniels. Furthermore, Cook teaches the agent software 101 becomes a virtual tutor by acting as a student's personal and individualized tutor.

Additionally, Cook discloses plurality of virtual tutors can be created individualized to each student, which formed by the functioning of agent software 108 with student data object 109, which stores characteristics of student 101 and assignments and standards set by teachers and administrators 106. In other words, the agent becomes a virtual tutor by acting as a student's personal and individualized tutor (i.e., dynamically adding virtual tutors based student's needs). The agent adapts to the student, and thereby the virtual tutor individualizes to the student needs.

As to claim 21, applicant alleges Daniels fails to teach the feature of "wherein the second virtual instructor monitors progress and provides feedback.

Examiners asserts Cook discloses wherein the second virtual instructor monitors progress and provides feedback (see col. 11, lines 49-65, where Cook teaches the agent software provides feedback to the instructional materials so that their presentation can be individualized according to student performance).

As to claim 24, applicant alleges the combination of Daniels and Cook fail to disclose "wherein the second virtual instructor works with the first instructor to instruct the one or more users." Moreover, Daniels fails to suggest anything about the second virtual instructor working with the first instructor to instruct a user. Daniels merely discloses three different teacher subgroups in the teach group without any interaction between the subgroups.

Examiner respectfully disagrees applicant's assertion the combination of Daniels and Cook fail to disclose "wherein the second virtual instructor works with the first instructor to instruct the one or more users" because Cook discloses as illustrated in figure 1 principle component and interactions in the ABS system including software agent 101 (the second virtual tutor) , materials engine 102, and student data object 109, all of which interact with student 101 and with teachers and administrators 106 via a computer).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Salad Abdullahi/

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